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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/036,604	12/21/2001	Brian G. Morin	5388	4741

7590 04/08/2004  
Milliken & Company  
P. O. Box 1927  
Spartanburg, SC 29304

EXAMINER

JUSKA, CHERYL ANN

ART UNIT PAPER NUMBER

1771

DATE MAILED: 04/08/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/036,604

Applicant(s)

MORIN ET AL.

Examiner

Cheryl Juska

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eb

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 01/07/04 & 03/01/04.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 19-27 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 19-27 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Response to Amendment***

1. Applicant's amendment filed January 7, 2004, has been entered. Claims 1-18 have been amended as requested.
2. The terminal disclaimer filed with respect to the double patenting rejection of the present claims with US 6,541,554 is sufficient to overcome said rejection as set forth in section 2 of the last Office Action.
3. Applicant's statement of co-assignment of the present invention and the invention of the US 6,541,554 at the time of the claimed invention is acknowledged. However, contrary to applicant's assertion that said statement disqualifies the patent as a reference altogether, said statement merely obviates the 103 rejection of the claims as set forth in section 5 of the last Office Action, but not the 102 rejection. See MPEP 2146. Thus, said 103 rejection is hereby withdrawn, but said 102 rejection is maintained as set forth below.
4. Additionally, the 1.132 Declaration by Brian Burkhart is sufficient to overcome the 102/103 rejection based upon JP 2001-081628 issued to Inoue, as set forth in section 6 of the last Office Action.

### ***Claim Rejections - 35 USC § 102***

5. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

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6. Claims 19-27 stand rejected under 35 USC 102(e) as being anticipated by US 6,541,554 issued to Morin et al., as set forth in section 5 of the last Office Action.

***Claim Rejections - 35 USC § 103***

7. Claims 19-27 stand rejected under 35 USC 103(a) as being unpatentable over US 4,560,734 issued to Fujishita et al. in view of US 5,798,167 issued to Conner et al., as set forth in section 7 of the last Office Action.

***Response to Arguments***

8. Applicant's arguments filed with the amendment of January 7, 2004, have been fully considered but they are not persuasive.

9. Applicant fails to traverse the 102 rejection of claims 19-27 by the cited Morin patent, but merely relies upon the statement of co-assignment under 102(c) to overcome said rejection. However, as noted above, said statement is insufficient to overcome a 102 rejection.

10. With respect to the Fujishita and Conner rejection, applicant argues that Fujishita "does not provide proper and/or sufficient motivation to incorporate any nucleating agents with polypropylene tape fibers" (Amendment, page 4, lines 8-12). Additionally, applicant notes that Fujishita says it is known to add nucleating agents to said fibers, but asserts Fujishita states "there was no observation of heat shrinkability improvements within those target fibers at all" (Amendment, page 4, lines 12-16). Applicant contends that Fujishita obtains their inventive low-shrink, high-tenacity fibers by other modifications than the use of nucleating agents

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(Amendment, page 4, lines 16-19). As such, applicant asserts that Fujishita teaches away from the presently claimed invention (Amendment, page 4, line 19-page 5, line 5).

11. This argument is unpersuasive since Fujishita explicitly teaches the presence of a nucleating agent in the polypropylene fibers. See col. 7, lines 44-46, which states, "Further, when a nucleus-creating agent is added, a somewhat improvement in the heat-shrinkability is observed." Additionally, note claim 10: "Polypropylene fibers according to claim 1, having therein a nucleus-creating agent." Furthermore, it is noted that none of the instant claims limit the heat-shrinkage of the fiber. Thus, the combination of Fujishita and Conner clearly teaches claimed requirement of the presence of a particular nucleating agent in a particular amount. Therefore, the above rejection over Fujishita and Conner is hereby maintained.

### ***Conclusion***

12. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

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13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cheryl Juska whose telephone number is 571-272-1477. The examiner can normally be reached on Monday-Friday 10am-6pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached at 571-272-1478. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

14. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
CHERYL A. JUSKA  
PRIMARY EXAMINER

cj  
April 5, 2004